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Subject: WQS



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From our perspective, your email sounded more like a significant setback rather than an update on the approval of our water quality standards.

Regarding the legal descriptions of the water bodies listed in our standards, I don't know if you were aware that during the development of our standards, both EPA Region 5 and MPCA were given drafts for comments numerous times prior to the public meetings held in July 1998. In fact, in February 1998, we received comments from Gerry Blaha of MPCA which included corrections to the legal descriptions of Jaskari Lake, Martin Branch, Otter Creek, Stoney Brook, and the St. Louis River. Fred and I went over our USGS quad maps and compared each township, section and range listed for each water body in that particular draft of the ordinance to the corrections offered by MPCA, and determined that most of MPCA's suggestions were accurate. In the draft that went out for public comment (May 1998), we incorporated the corrected legal descriptions suggested by MPCA, and also included additional sections for Stoney Brook so that the extensive open-water drainage ditch system that it is today was fully covered, not just the historical stream channel (which for the most part has been non-functional since shortly after the turn of the century, when the ditches were dug). There was never any indication from EPA that these corrected legal descriptions would put our TAS in jeopardy, especially given that any jurisdictional disputes regarding water quality standards would be between Fond du Lac and the MPCA, and we were in agreement at that point over the legal descriptions of our tribal surface waters.

Chris and I would also appreciate clarification on the fee lands/Montana test requirements before we ask our tribal attorney for advice on this latest development in the approval process. The suggestion that Fond du Lac might want to submit the technical portion of our standards to be promulgated by EPA at the time that core standards are put forth is not very palatable to us, nearly a year after our RBC adopted our standards into ordinance. In fact, EPA's extensive delays in approving our standards, after we have been granted TAS, followed all guidance, repeatedly revised and corrected text and criteria, responded to MPCA and Region 5 comments, been through public review and tribal adoption, passed USFWS T&E review, been held to a much greater standard of scrutiny than even the state of Minnesota, might be construed as stonewalling. If, after five years of the process and EPA "support", Fond du Lac doesn't yet have standards that are approvable by EPA, then what are the possibilities for other tribes to develop their own tribal standards?

We would appreciate any clarification you could give us at this point, and look forward to a conference call in the near future to hasten a positive conclusion to this excruciating process.

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